

APPEAL NO. 040331
FILED APRIL 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 20, 2004. As to the sole issue before her, the hearing officer determined that the respondent (claimant) did have disability resulting from his _____, compensable injury beginning May 27 and continuing through December 9, 2003. The appellant (carrier) appealed, asserting that the hearing officer's determination is not supported by the evidence, and additionally, that the hearing officer erred as a matter of law by failing to "address evidence presented regarding the [c]laimant's termination for cause while working in a light duty capacity." The file does not contain a response from the claimant.

DECISION

Affirmed, as reformed.

On appeal, the carrier correctly points out that Finding of Fact No. 1A does not accurately reflect the identity of the employer. Although the record is clear that the correct employer is (employer 1), doing business as (Services), Finding of Fact No. 1A lists the employer as (incorrect name of employer). Finding of Fact No. 1A is hereby reformed to reflect that the employer is (employer 1), doing business as (Services).

It is undisputed that the claimant sustained a compensable injury on _____, and that he was terminated from his employment on May 27, 2003. The sole disputed issue is whether the claimant has had disability, which is defined in Section 401.011(16) as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The carrier argues that the hearing officer did not "address" the basis for the claimant's termination, or whether it is the termination or the injury that causes the inability to obtain or retain preinjury wages. In Texas Workers' Compensation Commission Appeal No. 91027, decided October 24, 1991, we held that termination for cause does not necessarily preclude disability, but may be considered by the hearing officer in determining why a claimant is unable to earn the preinjury wage. Thus, disability can continue after termination if a cause of the inability to earn the preinjury wage after termination was the compensable injury. Texas Workers' Compensation Commission Appeal No. 93850, decided November 8, 1993. Contrary to the carrier's assertion, the hearing officer did in fact discuss the reason for the claimant's termination in her Statement of the Evidence. Nothing in our review of the record indicates that the hearing officer was unaware of, or failed to consider, the circumstances surrounding the claimant's termination. As such, we perceive no reversible error.

Conflicting evidence was presented at the CCH on the disputed issue of disability. The hearing officer is the sole judge of the weight and credibility of the

evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Apparently the hearing officer was persuaded by the evidence that the claimant met his burden of proof on the disability issue. Although there is conflicting evidence in this case, we conclude that the hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed as reformed herein.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge